"For my part I am not prepared to accept the view that there is in law any presumption that anyone, even a judge, knows all the rules and orders of the Supreme Court. The fact is that there is not, and never has been, a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a *maxim* of very different scope and application."

In conclusion I am of the view that the learned president misdirected himself both in law and on facts. The appeal is allowed. The order of the learned president is set aside and an order of acquittal and discharge of the appellant is substituted therefor.

*Appeal allowed.*

Solicitors: *Nadchatiram Bros.*

---

## PUBLIC PROSECUTOR v. SANASSI

**[O.Cr.J. (Sharma J.) April 17, 1970]**

**[Malacca — Criminal Trial No. 2 of 1970]**

*Criminal Law and Procedure — Trial — Statement of accused from dock — Whether accused has a right to make such a statement — Whether such statement constitutes evidence — Whether statement can include statements made to police during the course of investigations — Criminal Procedure Code (Cap. 21) ss. 5 and 124.*

*Evidence — Statement of accused from dock — Whether evidence — Evidence Ordinance, 1950, s. 3.*

In this case at the close of the prosecution case the accused was asked to enter upon his defence and he elected to make an unsworn statement from the dock. In the course of making that statement he referred to various statements which he said he made to the police investigating officer in the course of his investigations. The question arose whether the accused could make such statement from the dock and whether a statement, which would otherwise be inadmissible, could form part of the statement if the accused elected to make such a statement from the dock.

**Held:** (1) accused has a right to make an unsworn statement from the dock but such a statement does not constitute evidence and the accused making such a statement cannot be a witness;

(2) those parts of the statement which relate to what the accused told the investigation officer in the course of investigations should be deleted from the statement.

*Cases referred to:-*

(1) *State* v. *Setaram Dayaram Kachhi* A.I.R. 1958 M.P. 99.

(2) *Moral Majhi* v. *State* A.I.R. 1958 Cal. 616.

(3) *Emperor* v. *Tuti Babu* A.I.R. 1946 Patna 373.

(4) *Chajju & Ors.* v. *Emperor* 63 I.C. 460.

(5) *Shian Sunder* v. *Emperor* 22 Cr. L.J. 699.

(6) *Nathu Singh* v. *Emperor* 88 I.C. 362.

(7) *Ng Hoi Chen & Anor.* v. *Public Prosecutor* [1968] 1 M.L.J. 53.

(8) *Wong Heng Fatt* v. *Public Prosecutor* [1959] M.L.J. 20.

(9) *Mohamed Salleh* v. *Public Prosecutor* [1969] 1 M.L.J. 104.

CRIMINAL TRIAL.

*Ahmad bin Haji Abdul* (Deputy Public Prosecutor) for the prosecution.

*S. Shunmugam* for the accused.

**Sharma J.** (delivering oral ruling): At the close of the prosecution case the accused was asked to enter upon his defence. He was explained the usual three courses open to him and he elected to make an unsworn statement from the dock. In the course of making that statement he referred to various statements which he said he made to the investigating officer P.W. 1 in the course of his investigations. The impression I had at that time, and it is confirmed by the defence counsel, was that the accused was entitled to say what he wished to say from the dock irrespective of whether parts of his statement were hit by the provisions of section 124 of the Straits Settlements Criminal Procedure Code. This was on the ground that as the accused was not being examined and was not to be subject to any questioning either by his own counsel or by the prosecution or the court or the jury, his statement in its entirety, so far as it related to questions on matters arising out of, or connected with the matters in issue, should be taken down by the court in full. I consequently allowed his entire statement and took it down verbatim as interpreted through the interpreter. At the close of that statement, I invited both the learned deputy public prosecutor and Mr. Shunmugam to give me their views on whether a statement, which would otherwise be inadmissible, could form part of the statement of the accused if he elected to make such a statement from the dock. I asked both the learned deputy public prosecutor and the defence counsel whether there was any specific provision under our Criminal Procedure Code which allowed the accused to make a statement from the dock. I was told that that was a time-honoured practice which had been observed in the courts and that this was regarded as a traditional right as it were and that the accused is, always and in all cases, given the usual three options. He could, if he so desired, make an unsworn statement from the dock, although there was no specific provision in our Criminal Procedure Code dealing with the question. The matter was adjourned in order that both the defence counsel and the learned deputy public prosecutor could look into the law and give me the benefit of their examination of the authorities so that I could be assisted in deciding the question. Mr. Shunmugam this morning conceded that those parts of the statement of the accused which related to statements made to the police during the course of investigations should be scored out under the provisions of section 124 of the Straits Settlements Criminal Procedure Code. He further conceded that the statement of an accused made from the dock does not in law constitute what is strictly evidence.

The learned deputy public prosecutor has, however, urged upon me that the unsworn testimony of an accused does constitute evidence in law. This is a matter of some considerable importance and I would very much have preferred to consider it at some leisure after going through the authorities, if any, dealing with the question, but as this question arises in a jury trial it has got to be decided and dealt with here and now. I regret, however, that I suffer from a great disadvantage and handicap in the court here in not having available the necessary books and authorities to which I could otherwise make reference.

Our Evidence Ordinance is, except for some differences, identical with the Indian Evidence Act. The provisions of section 120(3) of our Evidence Ordinance are not to be found in the Indian Evidence Act, which means that under the Indian Evience Act, an accused person is not a competent witness in his own behalf. Our Criminal Procedure Code is also more or less modelled on the Indian Criminal Procedure Code and the wordings of the various sections of our Criminal Procedure Code are, wherever applicable, almost identical. Section 342(iv) of the Indian Criminal Procedure Code, before its amendment in 1955, read as follows:

"No oath shall be administered to the accused."

In the year 1955 this section was amended and the words "when he is examined under sub-section (i)" were added as a result thereof. By the same amending Act section 342A was added to the Indian Criminal Procedure Code which reads as follows:

"Any person accused of an offence before a criminal court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial provided that

(a) he was not to be called as a witness except on his own request in writing or

(b) his failure to give evidence was not to be made the subject of any comment by any of the parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial."

Accordingly under the amended section 342A an accused person is now in India a competent witness for the defence and he can be administered oath as a witness for himself or for any person charged together with him at the same trial. In the commentary on section 342A of the Indian Criminal Procedure Code by *Chitaley and Rao* it is stated:

"While the sworn testimony of the accused under this section would be technically treated as evidence, in case however he refuses to choose to examine himself under this section, his unsworn statement recorded under section 342 would not be evidence."

The cases referred to in support of that proposition are the *State* v. *Setaram Dayaram Kachhi*[1] and *Moral Majhi* v. *The State*.[2]

*Sohoni* in his Criminal Procedure Code, 16th Edition, says:

"The simple fact that the Code contains two sections, namely sections 342 & 342A, is sufficient to indicate that if the accused chooses to examine himself as a witness on oath for the defence then what he says will be technically treated as evidence but if he does not so choose to examine himself, it will not be technically evidence within the meaning of the word 'evidence' in s. 3 of the Act. But that does not affect the value of the statement made by the accused in answer to questions from the court under s. 342."

Section 342 of the Indian Criminal Procedure Code is the same as section 249 of the Straits Settlements Criminal Procedure Code (which is the same as section 256 of the F.M.S. Criminal Procedure Code). Under section 249 it is the court which may at any stage of the trial or inquiry ask the accused certain questions in order to enable him to explain any circumstances which may appear in the evidence against him. That section therefore has a very limited application and is no bar to the right of the accused under our law to make a statement from the witness box. A statement under section 249 of the Straits Settlements Criminal Procedure Code has to be an unsworn statement as laid down in that section. The quotation from *Sohoni* goes on to say that "though not technically 'evidence' the unsworn statement is one of the matters before the court which under section 342 must be taken into consideration by the court."

I have already earlier said that a statement under section 342 of the Indian Criminal Procedure Code or section 249 of the Straits Settlements Criminal Procedure Code is a statement made by the accused in answer to questions put by the court and that the application of those sections is restricted in their scope in order to enable the accused to explain certain matters which appear in evidence against him. The Evidence Ordinance is a complete Code but is exhaustive only on matters which are specifically dealt with in it. It does not contain the whole law of evidence. Rules of evidence in other Acts, Ordinances or Codes are not affected. The object of the rules of evidence is to help in the ascertainment of truth, to protect protracted inquiries and to avoid confusion in the minds of judges and juries, which may result from the admission of evidence in contravention of those rules. If every circumstance which might tend to throw light on a matter in issue is let in, the trial will be protracted to an intolerable length. One of the objects of the law of evidence is to restrict the investigations made by the court within the bounds prescribed by general convenience and the object would be completely frustrated by the admission on all occasions of every circumstance on either side having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and the determination of fresh collateral issues growing up in endless succession as the inquiry proceeds. Evidence which tends to divert the attention of the court and to waste its time is rejected.

Section 3 of the Evidence Ordinance defines evidence in these terms:

" 'Evidence' includes

(i) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry: such statements are called oral evidence;

(ii) all documents produced for the inspection of the court: such documents are called documentary evidence."

It was urged upon me by the learned deputy public prosecutor that because the words "permits or requires" appears in the definition of evidence in the Evidence Ordinance, anything which the court permits the witness to say constitutes evidence. I am of the view that that construction on those words is not only very wide but unwarranted. The words "permits or requires" in my view are used in section 3 in the context of being authorised by law, or required by law and this to me seems all the more so because of the provisions contained in section 165 of the Evidence Ordinance which empower a judge to ask any question he pleases in any form at any time of any witness or party about any fact relevant or irrelevant. Considering the definition of evidence as embodied in section 3 of the

Evidence Ordinance, I am of the view that evidence signifies only the instruments by means of which relevant facts are brought before the court by witnesses and documents. Evidence properly admitted is thus admissible for all purposes. There are, however, matters which are not strictly speaking evidence but which may be considered by a court and which may be treated as evidence.

The question, however, which arises in this case is whether the statement by the accused is evidence. There are matters which may be considered by the court but which are strictly speaking not evidence. I may give some examples of these. Pleadings of parties for example in civil cases are not evidence unless they are relevant as admissions. I had earlier referred to section 249 of the Straits Settlements Criminal Procedure Code. Sub-section (3) of section 249 of this Code specifically states that the answers given by the accused may be taken into consideration in the trial and put in evidence for or against him in any inquiry into or other trial for any other offence which such answers tend to show he has committed. This is a specific provision under the Criminal Procedure Code and in no way deals with the so-called right of the accused to make a statement from the dock. Section 249 of the Straits Settlements Criminal Procedure Code is meant for a very limited purpose to enable the accused to explain any circumstances which appear in evidence against him and whatever the accused says under section 249 is said in answer to questions put by the court.

In the case of *Emperor* v. *Tuti Babu*[3] the headnote says:

"No doubt when a written statement is put in on behalf of the defence a court should give due consideration to it, but it does not necessarily follow that everything stated therein is necessarily legal evidence.

There may be circumstances where the documents are put in which require no formal proof or documents which may be admitted by both sides in which case the court may be justified in referring to them, but documents which are undoubtedly inadmissible until formally proved need not be considered by a court whether filed with a written statement or otherwise unless duly proved."

In the same case Beevor J. held:

"A written statement filed on behalf of an accused is not a statement made by a witness nor can it be treated as a document produced for the inspection of the court within the meaning of s. 3, Evidence Act. The statement of the accused is not strictly evidence even though the court may consider it.

In one sense the court is bound to consider any document which is tendered before the court for the purpose of being admitted in evidence, but that is a different thing from considering it as evidence. Documents should not be tendered with the written statement but should be tendered separately for admission in evidence and it will then be open to the court to decide whether such documents require proof before they can be admitted in evidence, but the court should not accept other documents as part of the written statement."

Section 4(1)(a) of the Oaths and Affirmations Ordinance 1949 so far as is relevant reads as follows:

"Subject to the provisions of section 5 of this Ordinance, oaths *shall be taken* by the following persons —

(a) *witnesses*, that is to say all persons who may be lawfully examined, or give or be required to give *evidence*, by or before any court or person having, as mentioned in section 3 of this Ordinance, authority to examine such person or to receive evidence...."

The ordinary meaning of section 4(1)(a) seems to suggest that a witness is a person who may be lawfully examined or who may give evidence or be required to give evidence and a witness is, under section 4(1)(a) of the Oaths and Affirmations Ordinance, required to take an oath. I am of the view that any person who is a witness in a case is required to give evidence on oath or affirmation. In order to constitute "evidence" as defined in section 3 of the Evidence Ordinance an oral statement made to the court has to be by a "witness". A witness can only give evidence from the witness box and not from the dock or elsewhere. As I have said earlier I lack the facilities of a proper library here and must confess that I have not had the advantage of going through the authorities for the simple reason that they are not obtainable here but the following cases are referred to in support of the proposition: *Chajju & Ors.* v. *Emperor*,[4] *Shian Sunder* v. *Emperor*[5] and *Nathu Singh* v. *Emperor*.[6]

A witness is defined in the *Shorter Oxford* English Dictionary as "testimony by signature, oath etc... one who gives evidence in relation to matters of fact under enquiry, *spec.* one who gives or is legally qualified to give evidence upon oath or affirmation in a court of justice or judicial inquiry." The idea of taking an oath is consequently implied in the term "witness".

*Monir* in his book on the Law of Evidence dealing with the question of competency, compellability, privilege and admissibility says as follows:

"Competency of a witness must be distinguished from his compellability and from privilege. A witness is said to be competent when there is nothing in law to prevent him from being sworn and examined if he wishes to give evidence. Though the general rule is that a witness who is competent is also compellable, yet there are cases where a witness is competent but not compellable to give evidence, as for example, sovereigns and ambassadors of foreign states. Again compellability to be sworn and examined must be distinguished from privilege, i.e., from compellability, when sworn, to answer certain specific questions. Sections 118 to 121 and section 133 deal with competency; the subject of general compellability is not specifically dealt with by the Evidence Act; and sections 121 to 132 deal with privilege. The admissibility of evidence is not solely dependent on the competency of the witness. A witness may be competent, yet his evidence may be inadmissible, as for instance, where it relates to hearsay or to confessions made to a police officer."

Section 4(1)(a) of our Oaths and Affirmations Ordinance is very similar to section 5 of the Indian Oaths Act. Dealing with it, *Monir* says:

"Section 5 of the Oaths Act enacts that a witness must be examined on oath or affirmation."

My attention was drawn to the case of *Ng Hoi Cheu & Anor* v. *Public Prosecutor*[7] in which Chang Min Tat J. held:

"Since an accused person can refuse to be examined or to give evidence under his undoubted right to elect to venture only a statement from the dock or to remain silent, he cannot come within the definition of 'witness' in this Ordinance. He may well be a witness on his own behalf but this is only to say that he is a competent witness but he is never a compellable witness. As a witness, he cannot be administered an oath or an affirmation if he chooses to make a statement from the dock, but what he says therefrom comes fairly and

squarely within the definition of 'evidence' in the Evidence Ordinance."

It is somewhat painful for me to have to differ from what my learned brother judge has held in that appeal. I say this because of certain passages which I have already referred to and the authorities relied upon in those passages. Section 4(1)(a) of the Oaths and Affirmations Ordinance refers to "witnesses, that is to say, all persons who may be lawfully examined, or give or be required to give evidence, by or before any court or person, having, as mentioned in section 3 of this Ordinance, authority to examine such person or to receive evidence." The construction put upon it by Chang Min Tat J. could perhaps only be justified if the words "such or all such" are substituted for the word "all" appearing before the words "persons who may..." (although the position may still not be free from doubt). Applying the ordinary canons of construction, I am of the opinion that any person who is entitled to be called a witness in a case has to take an oath or an affirmation as provided for in section 4(1)(a) of the Oaths and Affirmations Ordinance. The case of *Wong Heng Fatt* v. *Public Prosecutor*[8] was referred to in the judgment in the case of *Ng Hoi Cheu & Anor.* v. *Public Prosecutor.*[7] Smith J. in that case said this:

"I do not consider that a statement by an accused person from the dock is evidence in view of the provisions of section 4(1)(a) of the Oaths and Affirmations Ordinance, 1949 the essential part of which reads '... oaths shall be taken by... witnesses, that is to say, all persons who... give evidence... before the court....' Since the appellant was not sworn or affirmed he did not give evidence."

I am inclined to agree with what was decided by Smith J. in *Wong Heng Fatt* v. *Public Prosecutor*[8] and for the reasons which I have already stated.

In the result I hold that the statement of an accused from the dock is not evidence. Being not evidence, it could perhaps be urged that as section 124 of the Straits Settlements Criminal Procedure Code only forbids the use of statements made to the police in the course of an investigation as *evidence* such statements could be used while the accused was making an unsworn statement from the dock. It is not necessary for me to go into that aspect of the matter. Mr. Shunmugam appearing for the accused has, I think very rightly, told the court that the statements made by the accused during the course of investigations should be deleted from the statement which he made yesterday in court because those statements are hit by the provisions of section 124. I am quite conscious of the fact that the mere statement of counsel for the accused cannot turn an admissible statement into an inadmissible statement. Yet the effect of section 124 is that those statements are not to be used in *evidence*, and the statement of the accused made from the dock does not constitute *evidence and it is only evidence which the jury should take into account and to which I should draw their attention.* I will consequently delete all those parts of the statement which are to be found in the statement of the accused and which relate to what he told P.W. 1 in the course of the investigations and I will direct the jury to that effect.

There is one little point of some academic interest which has arisen in this case and that is the right of the accused to make a statement from the dock. There is no such provision to be found either in the Straits Settlements Criminal Procedure Code or the F.M.S. Criminal Procedure Code, or for that matter in the Criminal Procedure Code of Singapore. Chang Min Tat J. in the case of *Ng Hoi Cheu* v. *Public Prosecutor*[4] referred to it as the undoubted right of the accused. The learned deputy public prosecutor referred me to the Singapore case of *Mohamed Salleh* v. *Public Prosecutor*[9] in which the judgment of the Federal Court was delivered by Wee Chong Jin C.J. who said in his judgment:

"The right of an accused at his trial on a criminal charge to make an unsworn statement from the dock is not a procedural right but a substantive right of an accused and accordingly does not depend on whether or not there is a specific provision for it in the Criminal Procedure Code. It seems to us beyond doubt that under our system of administration of justice, and it has been so throughout the entire history of our courts, a person accused of a criminal offence before an established court of justice has at his trial, as part of his defence, the right to make an unsworn statement from the dock if he wishes to do so. In our view this right can be taken away only by an express statutory provision to that effect."

It seems to me that the so called undoubted or traditional right of the accused to make an unsworn statement from the dock is purely an incident of history, political bondage or affiliation with a system of law we have so gainfully remained associated with which is responsible for most of our important legislation. Section 5 of the Straits Settlements Criminal Procedure Code reads as follows:

"As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in the State the law relating to criminal procedure for the time being in force in England shall be applied so far as the same does not conflict or is not inconsistent with this Code and can be made auxiliary thereto."

The Criminal Evidence Act, 1898 of England enables every person charged with an offence to be a witness for the defence in every stage of the proceedings and section 1(h) of that Act provides that "nothing in this section shall affect... the right of the person charged to make a statement without being sworn." If therefore the accused in this country has any right to make an unsworn statement from the dock, it is only derived from the Criminal Evidence Act, 1898 of England as read with section 5 of the Straits Settlements Criminal Procedure Code. Our Evidence Ordinance, however, is a complete Code on matters covered by it except matters which are to be found in other enactments or rules. In view of the provisions of section 5 of the Straits Settlements Criminal Procedure Code I am of the view that the accused is perfectly within his rights to make an unsworn statement from the dock, but as I have already said, such a statement does not constitute evidence and the accused making such a statement cannot be a witness. It is entirely a matter for the legislature to decide whether the procedure of the courts in this country, which is now sovereign and independent, should depend upon a foreign enactment and whether any amendment made to its own laws by a foreign Government should still continue to remain binding on us who have a supreme legislature of our own. I say so with some emphasis because most of our present

law graduates are locally qualified and they should not generally be concerned with how the Parliament of England prescribes a procedure granting a right to the accused to make a statement from the dock or how and why such a right is modified or taken away by that Parliament.

*Ruling accordingly.*

---

## PACKIRISAMY v. JANAGI

[A.C.J. (Sharma J.) May 15, 1970]

[Malacca — Civil Appeal No. 1 of 1970]

*Practice and Procedure — Application to set aside order made in default of appearance — Illness of defendant — Discretion of trial judge — Subordinate Courts Rules, 1950, O. 19 r. 3.*

The appellant applied to set aside an order made against him in his absence, whereby judgment was entered for the plaintiff in the action. The appellant stated that he arrived late at the court on the day fixed for trial as he had to go to see a medical practitioner to obtain a medical certificate. By the time he arrived in the court he was informed that the plaintiff had already obtained judgment against him. The appellant had filed his defence in which he had raised questions as to the competence of the plaintiff to file the action by her attorney and also a defence under the Moneylenders Ordinance. The learned president refused the application and the appellant appealed.

**Held,** allowing the appeal: in the circumstances of this case the learned president had not exercised his discretion in a judicial manner and what he did was in fact in complete disregard of the evidence he had before him.

*Cases referred to:-*

(1) *Safety Insurance Co. Ltd.* v. *Hua Seng Electric Co.* [1968] 1 M.L.J. 273.

(2) *Foo Chiew Fong* v. *Guriman* [1957] M.L.J. 51.

MAGISTRATE'S CIVIL APPEAL.

*F. H. D'Cruz* for the appellant.

*P. Devadas* for the respondent.

**Sharma J.** (delivering oral judgment): This is an appeal against the order of the learned president refusing the application of the first defendant to set aside the order made against him on the 6th day of January 1970 in his absence for reasons of the first defendant's illness. The summons was filed on the 24th day of November 1969 and the first returnable date mentioned in the summons was the 6th day of January 1970 itself. The first defendant filed his defence on the 18th day of December 1969 and in his defence raised questions of the competence of the plaintiff to file the action because the action was filed by her attorney and not by her personally. The first defendant alleged that the plaintiff was at all material times and at the time of the filing of the action a resident of Malacca. Order 5 rule 7 of the Subordinate Courts Rules deals with the matter. The other line of defence was under the Moneylenders Ordinance. In fact the plaintiff in the statement of claim admitted that she was a licensed moneylender and the transaction with the defendants was a moneylending transaction.

The action came up for mention on the 6th day of January 1970. At that time the second defendant had not been served and when the case was called the first defendant was absent. The learned president acting under the provisions of O. 19 r. 3(1)(b)(i) of the Subordinate Courts Rules entered judgment for the plaintiff. On the 13th day of January 1970 the first defendant made an application to the court to set aside the order of the learned president made on the 6th day of January 1970 and in support of his application filed an affidavit to the effect that he was suffering from flu and fever on the 6th day of January 1970 and for that reason could not attend the court at 9 a.m. Other grounds showing the merits of his defence were also disclosed in the affidavit. This application came up for hearing on the 17th day of February 1970 when the first defendant appeared through his counsel and the medical certificate Ex. P1 was produced. After hearing the counsel for the first defendant the learned president asked the plaintiff who seems to have only orally objected to the application and on that oral objection by the plaintiff (without any affidavit filed by him and without making any request to cross-examine the first defendant on his affidavit) the learned president dismissed the first defendant's application. In his grounds of judgment all he says is:

"In my opinion the reasons the defendant (1) gave were not sufficient to set aside the former order. If defendant (1) was really sick how was it possible for him to come to court later the same day. For this reason I dismissed the defendant (1)'s application."

All that the first defendant said in his affidavit was that he reached the court late and could not be present in court at 9 a.m. on the 6th day of January 1970 as he had gone to obtain a medical certificate from a medical practitioner and that by the time he arrived in court at 10 a.m. he was informed that the plaintiff had already obtained judgment in default against him. The second defendant had not on the 6th day of January 1970 been served and in my view it could not have in any way advanced the interests of justice if the default judgment given on the 6th day of January 1970 was not set aside. The promissory note in question which was the basis of the plaintiff's claim is alleged to have been signed by both the defendants. The interests of justice might have been better served if the action was heard after the second defendant had also filed his defence. Under the provisions of O. 19 r. 3(3)

"any judgment or order given or made in the absence of a party may, on his application and if good reason for such absence is shown, be set aside and the proceedings may be reheard upon such terms as to costs or otherwise as the court shall think fit."

The rule requires that a good reason should only be shown and all that the first defendant said was that he reached the court late because of his sickness. The mere fact that a person is suffering from flu or fever does not mean that he is not able to attend court. The first defendant's sickness may in fact be a reason why he gave priority to seeing a doctor than taking his person to court at 9 o'clock. He had not defied any order of the court. All that he did was that he thought it appropriate and best for him to look after his illness first and then go to court. The affidavit filed by the first defendant was not challenged at all and the learned